

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**RONIER R. KENNEDY,**

Petitioner,

v.

**CIVIL ACTION NO.: 3:15-CV-35  
(GROH)**

**LEONARD ODDO,  
Warden,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation ("R&R") [ECF No. 14] issued by United States Magistrate Judge James E. Seibert on July 13, 2016. In the R&R, Magistrate Judge Seibert recommends that the Petitioner's 28 U.S.C. § 2241 petition (alternatively styled as a motion for a writ of audita querela) [ECF No. 1] be denied and dismissed with prejudice. For the following reasons, the Court **ADOPTS** the magistrate judge's R&R and **ORDERS** that the instant petition be **DISMISSED**.

Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for his preparation and submission of an R&R. Now, under 28 U.S.C. § 636(b), this Court is required to conduct a de novo review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are

addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and of a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Here, service of the R&R was accepted at Federal Correctional Institution, Hazelton, where the Petitioner is presently incarcerated, on July 20, 2016. As of the date of this Order, the Court has not received any objections to the R&R. Therefore, after allowing for an appropriate amount of time to ensure personal receipt and to compensate for postal delays, the Court finds that the deadline for the Petitioner to submit objections to the R&R has passed. Accordingly, this Court has reviewed the R&R for clear error.


The magistrate judge recommends denying and dismissing the instant 28 U.S.C. § 2241 petition because the Petitioner has failed to demonstrate that he could meet the "savings clause" of 28 U.S.C. § 2255(e) or the requirements of In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000). In addition, looking to the substance of the instant petition, the magistrate judge found that the Petitioner's Tenth Amendment claim lacks merit. Upon review and consideration, this Court finds no clear error in the magistrate judge's findings and conclusions of law.

Accordingly, it is the opinion of this Court that Magistrate Judge Seibert's Report and Recommendation [ECF No. 14] should be, and is hereby, **ORDERED ADOPTED** for the reasons more fully stated therein. The Court **ORDERS** that the Petitioner's 28 U.S.C. § 2241 petition [ECF No. 1] is **DENIED and DISMISSED WITH PREJUDICE**. This matter is **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to

enter a separate judgment order in favor of the Respondent pursuant to Federal Rule of Civil Procedure 58. Because the Petitioner is a federal prisoner seeking relief through a 28 U.S.C. § 2241 petition, the Court makes no certificate of appealability determination in this matter.

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* Petitioner by certified mail, return receipt requested, at his last known address.

**DATED:** August 19, 2016



GINA M. GROH  
CHIEF UNITED STATES DISTRICT JUDGE